

EXHIBIT 53

1

C O N F I D E N T I A L
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:)
)
BERNARD L. MADOFF INVESTMENT)
SECURITIES LLC,) Adv.Pro.No.
) 08-01789(BRL)
Debtor.)
-----)
IRVING H. PICARD, Trustee for)
the Liquidation of Bernard L.)
Madoff Investment Securities,)
LLC,)
Plaintiff,) Adv.Pro.No.
) 09-1182(BRL)
v.)
)
J. EZRA MERKIN, GABRIEL CAPITAL,)
L.P.; ARIEL FUND LTD.; ASCOT)
PARTNERS, L.P.; GABRIEL CAPITAL)
CORPORATION,)
)
Defendants.)

VIDEOTAPED DEPOSITION of ED THORP, as taken by and
before GAIL E. KENNAMER, Certified Court Reporter 4583,
CCRR of the State of California, at the offices of
BAKER & HOSTETLER, 600 Anton Boulevard, Suite 900,
Costa Mesa, California, on Tuesday, May 22, 2012,
commencing at 9:41 a.m.

PICARD v. J. EZRA MERKIN

CONFIDENTIAL

ED THORP 5/22/12

162

1 But I would like to add something, another
2 comment. I think if we looked at some of the records
3 that were mentioned, you will find that there were
4 significant number of down months amongst almost all
5 these people we talked about, not just an occasional
6 month every couple years, but, you know, higher
7 frequency to that. And I don't think you'll find
8 anybody that was up month after month every month.

9 Q My question was going to be, what -- By you
10 looking at Mr. Madoff's returns and performance where
11 he also similarly had many positive months, what in
12 your mind when you were looking at this back in 1991,
13 differentiated the manner in which those returns,
14 positive returns being generated consistently, from how
15 you obtained it or others that you knew of that were --
16 that had similar types of returns?

17 A Well, the first thing is that I think except
18 for me, nobody else had similar-type returns. It's
19 just the way it worked.

20 There were -- it was -- There had been some
21 academic studies about this, and our -- our particular
22 partnership comes up at the top of the pile on rich
23 return in all the studies. So it's -- it's the -- it's
24 the outlier among them.

25 When I saw Madoff returns, it was the most extreme

PICARD v. J. EZRA MERKIN

CONFIDENTIAL

ED THORP 5/22/12

158

1 computation of how much money would be -- or estimate
2 how much money had to be flowing in and how much -- how
3 much -- how rapidly this was growing as a result, and
4 it had to be really large. Had to be, you know,
5 10 billion by then or something.

6 Q So you were -- You were particularly surprised
7 that Mr. Madoff -- that if Mr. Madoff was running a
8 fraud or Ponzi scheme, that a decade after you had
9 looked at McKinsey's records, it was still going on?

10 A Correct.

11 Q And by the way, the -- You're certainly aware
12 of managers who have had long track records of success;
13 correct?

14 A Yes.

15 Q For example, you, I think, would count as one
16 of them; right?

17 A So people say.

18 Q And -- And you were able to generate positive
19 returns when you were at Princeton/Newport Partners in
20 some -- my math clearly is not as good as yours -- but
21 227 out of 230 months I think puts it something like
22 98.6 percent positive months; is that right?

23 A Sounds about right.

24 Q And after fees, your investors had compound
25 returns in excess of 15 percent a year?

PICARD v. J. EZRA MERKIN

CONFIDENTIAL

ED THORP 5/22/12

159

1 A Uh-huh.

2 Q And then you were able to put up similar type
3 of performance, maybe not for quite as long a period,
4 when you started Ridgewood?

5 A Ridgeline.

6 Q Ridgeline. Sorry.

7 That had similar types of return characteristics,
8 albeit for approximately a year period?

9 A Yes. The returns were as good or better, but
10 the fluctuations were somewhat greater.

11 Q And, for example, you're familiar with others
12 who have posted annual compound returns in the double
13 digits over decades --

14 A Yes.

15 Q -- correct?

16 Can you think of any?

17 A Well, probably the best record out there as
18 far as rate of return versus risk these days is
19 Medallion Fund run by James Simons.

20 Q Okay. And we have had some testimony about
21 Mr. Singer.

22 Would you put Mr. Singer in the same or similar
23 category?

24 A I think he's had less -- less rates of return.
25 I'm not sure what the numbers are, but they have been

PICARD v. J. EZRA MERKIN

CONFIDENTIAL

ED THORP 5/22/12

163

1 thing that I had ever encountered as far as the
2 tradeoff between risk and return. The amount of return
3 you are getting, and the fact that there weren't any
4 down months, so it seemed very improbable.

5 And my prior experience with records that appeared
6 to be that way were the ones I looked at, all turned
7 out to be frauds when they never had down months.
8 Some -- a couple of them are mentioned in the article.
9 So I was attuned to the fraud possibility early on when
10 I saw the record.

11 Q What impact, if any, would the type of
12 strategy that was employed have in that analysis?

13 A The split strike price strategy did not seem
14 to have any conceivable possibility of producing
15 regular positive months, month after month, year after
16 year.

17 Q And did any of the gentlemen or money managers
18 that Mr. Steiner inquired about, Mr. Englander or
19 Mr. Simons, did they use split strike strategy, to your
20 knowledge?

21 A I don't know.

22 I can't believe that Simons would have used it.

23 Q Okay. The -- Mr. Steiner asked you whether or
24 not -- he asked you questions about the time when
25 Mr. Madoff's brother told McKinsey that they would not

PICARD v. J. EZRA MERKIN

CONFIDENTIAL

ED THORP 5/22/12

170

1 had taken. Not a lot, but enough.

2 MR. POWERS: I have no -- I have no further
3 questions.

4 But I also realize I don't know whether or not you
5 consulted with your colleagues, defense counsel, to see
6 if they have any cross-examination.

7 MR. STEINER: I did, and we -- I think we --
8 I don't know who is still on the phone.

9 John, I don't know if you are still there or Casey
10 has joined but --

11 MR. SCOTT: I have no questions.

12 MR. STEINER: And from Goodwin?

13 MR. BRAIMAN: With reservation of rights, no
14 questions.

15 MR. POWERS: Okay.

16 MR. STEINER: You're done.

17 MR. POWERS: Thank you for your time.

18 MR. STEINER: And all the comments about the
19 SEC, we're excluding your -- they were totally
20 including his, they were excluding -- We're off.

21 VIDEO OPERATOR: We're off the record at
22 2:38.

23 (TIME NOTED: 2:38.)
24
25